# Teoh Bu Cheng v Loh Khay Sooi

HIGH COURT (PULAU PINANG) — CIVIL APPEAL NO 12–180 OF 2002
KAMALANATHAN RATNAM J
3 OCTOBER 2002

***Civil Procedure*** *— Appeal — Fact, finding of — Interference by appellate court — Whether decision of trial judge arrived at based on wrong inferences — Whether the appellate court ought to disturb the findings of the trial judge*

***Tort*** *— Negligence — Road accident — Appeal — Whether decision of trial judge arrived at based on wrong inferences — Whether the appellate court ought to disturb the findings of the trial judge*

The plaintiff's case was that he was riding his motorcycle along Jalan Bukit Minyak and when he reached Kota Permai, there was a road deviation due to road works. Whilst he was negotiating the deviation, the defendant's motortaxi that was proceeding from the opposite direction encroached onto the plaintiff's path and collided into another motorcycle as well as the plaintiff's motorcycle, which was in the correct lane. The defendant denied any collision with the motorcycles. At the lower court, the plaintiff called SP1 who had witnessed the collision. SP1 had jotted down the defendant's car registration number onto a piece of plaster. The sessions court judge found that the defendant's motortaxi was not involved in the accident. The plaintiff appealed.

**Held**, allowing the plaintiff's appeal:

(1) On the evidence, the defendant's motortaxi was in all probabilities involved in the accident. Although an appellate court ought to be reluctant in disturbing the findings of a trial court, where the judgment of the lower court was arrived at based on wrong inferences, the appellate court was entitled to interfere with such conclusions (see p 188A–B).

(2) SP1, the eye-witness had written the registration number of the motortaxi on a piece of plaster, which was tendered in court. SP1 had testified as to the manner in which the accident had occurred. In contrast, the defendant denied any involvement but was inconsistent in his court testimony. Further, his pleadings were imprecise and in the pleadings, he had conceded that the collision had occurred on his wrong side of the road. Accordingly, the plaintiff had proven his case against the defendant and the defendant was held to be wholly liable for the accident (see p 188B–C).

**[Bahasa Malaysia summary**

Kes plaintif adalah bahawa ketika beliau sedang menunggang motosikalnya di sepanjang Jalan Bukit Minyak dan apabila sampai di

Kota Permai, terdapat lencongan jalan disebabkan kerja-kerja jalan raya. Ketika beliau hendak melencong, teksi defendan yang datang dari arah bertentangan telah masuk laluan plaintif dan berlanggar dengan sebuah motosikal lain dan juga motosikal plaintif, yang berada dalam laluan yang betul. Defendan telah menafikan sebarang pelanggaran dengan motosikal tersebut. Di mahkamah rendah, plaintif telah memanggil SP1 yang telah menyaksikan pelanggaran tersebut. SP1 telah mencatatkan nombor pendaftaran kereta defendan ke atas sekeping plaster. Hakim mahkamah sesyen telah memutuskan bahawa teksi defendan tidak terlibat di dalam kemalangan tersebut. Plaintif telah merayu.

**Diputuskan**, membenarkan rayuan plaintif:

(1) Menurut keterangan, teksi defendan adalah dalam kesemua kebarangkalian terlibat di dalam kemalangan tersebut. Walaupun sesebuah mahkamah rayuan seharusnya keberatan untuk mengganggu keputusan sesebuah mahkamah perbicaraan, di mana penghakiman mahkamah rendah telah dicapai berdasarkan inferens-inferens yang salah, mahkamah rayuan tersebut adalah berhak untuk mengganggu kesimpulan-kesimpulan yang sedemikian (lihat ms 188A–B).

(2) SP1, saksi tersebut telah menulis nombor pendaftaran teksi itu di atas sekeping plaster, yang mana telah dikemukakan ke dalam mahkamah. SP1 telah memberi keterangan berhubung dengan cara bagaimana pelanggaran tersebut telah berlaku. Bertentangan dengan itu, defendan telah menafikan sebarang penglibatan tetapi tidak konsisten di dalam testimoni mahkamah beliau. Selanjutnya, pliding-pliding beliau adalah tidak tepat dan di dalam pliding-pliding tersebut, beliau telah bersetuju bahawa pelanggaran tersebut telah berlaku di bahagian salah jalan tersebut. Sehubungan itu, plaintif telah membuktikan kes beliau terhadap defendan dan defendan didapati bertanggungan sepenuhnya atas kemalangan tersebut (lihat ms 188B–C).]

**Notes**

For cases on finding of facts, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 814–819.

*K Selvarajan* (*K Selva & Assoc*) for the appellant/plaintiff.

*Thimas Matthews* (*G Balakrishnan* with him) (*Thomas Bala & Assoc*) for the respondent.

**Kamalanathan Ratnam J:**

*Facts*

The pleaded case of the plaintiff is that on 23 February 2001, he was riding his motorcycle PCV 2018 along Jalan Bukit Minyak from the direction of

Juru towards the direction of Bukit Mertajam. When he reached Kota Permai, and because road works were in progress there was a road deviation. Whilst the plaintiff was negotiating the said deviation, motortaxi PBX 2648 driven by the defendant and proceeding from the opposite direction encroached into the plaintiff's path and after colliding with motorcycle, No PEH 9047 which was ahead of the plaintiff's motorcycle then collided into the plaintiff's motorcycle which was in its correct lane.

In his defence, the defendant denied that there was a collision between motorcycle PCV 2018 and his motortaxi PBX 2648 when the defendant was in his correct path at the material time. This is the interpretation that I gave to the defendant's para 3 of the defence which reads as follows:

> Kecuali pihak defendan menafikan bahawa kemalangan berlaku di antara sebuah motosikal No PCV 2018 dengan motorteksi No PBX 2648 yang dipandu oleh defenden sewaktu defenden memasuki jalan sah dan pada hari dan tempat yang dikatakan didalam perenggan 4 pernyataan tuntutan, bahagian-bahagian lain di dalam perenggan 3 dan 4 itu dinafikan dan dengan demikian meletakkan pihak plaintif kepada buki yang tepat.

It would seem from the evidence led by the defendant that he denied being involved in the collision. However as an alternative pleading, the defendant averred that in the event the defendant was involved in the collision then he related numerous particulars of negligence on the part of the plaintiff.

*The evidence led*

The plaintiff called as his first witness (SP1) the rider of motorcycle PEH 9807. He testified that as he was riding his motorcycle at about 6.30am the defendant's motortaxi overtook him at speed and collided with a motorcycle ridden by a male Indian proceeding ahead of him and after that the said motortaxi collided with another motorcycle ridden by a male Chinese proceeding from the opposite direction. After the collision, the said motortaxi stopped momentarily and then left. He quickly jotted down the motortaxi number as PBX 2648. As soon as the motortaxi had left he alighted from his motorcycle and tried to render assistance to both the injured riders of the two motorcycles. When the second motorcyclist who was knocked down and who was more seriously injured had regained consciousness he wrote down the number of the said motortaxi on a piece of plaster and gave it to him. He identified the said piece of plaster in court. He identified the said person as the plaintiff. Because the plaintiff had asked him to help by reporting the accident to the police, he gave a police statement. Since the plaintiff used his handphone to call his home for assistance, he had the plaintiff's house telephone number and that evening he called the plaintiff and informed him that he was prepared to render any assistance.

Under cross-examination, he said that the motortaxi stopped for about five seconds. He was unable to identify the motortaxidriver as the latter did not alight from the motortaxi. He however confirmed that the colour of the motortaxi was blue. Under cross-examination, he confirmed that the motortaxi encroached into the plaintiff's path and caused the collision.

The next witness (SP2) was the police sergeant who investigated the case. He confirmed that at about 9.25am of the same day he received information from the male Indian rider relating to the road accident. When he arrived at the scene of the accident all the vehicles involved had been removed. He confirmed that the said motortaxi and two motorcycles were involved in the said accident although the driver of the said motortaxi did not lodge a report. He confirmed recording a statement from SP1 on 27 April 2001 at about 10.30am that is, about two months and four days later. Although he had called the motortaxi driver to the police station to record his statement, he had failed to attend. He testified that the damaged motorcycle of the male Indian had its front fork broken and the front rim bent whilst the plaintiff's motorcycle had its front mudguard broken. There was no other report of any other accident at that place on that date. He denied a suggestion that the said motortaxi was not involved in the said accident. The next witness SP3 was the plaintiff. He confirmed the contents of his pleadings. He also confirmed that after he had regained consciousness SP1 gave him the plaster on which the defendant's motortaxi number was written. He also confirmed that he had used SP1's handphone to call his house to inform his family that he had met with an accident. He was able to mention the motortaxi number in his police report because SP1 had given it to him. However, he had forgotten to mention this fact in his police report. He denied a suggestion that the motortaxi was not involved in the accident. He denied a suggestion that the motortaxi was merely there and had stopped and seen and then left the scene. The plaintiff next called (SP4), the male Indian who was riding motorcycle PEH 9047. He denied a suggestion that the accident occurred as a result of a collision between his motorcycle and that of the plaintiff.

The defendant testified that at about 6.30am that morning he was at the scene of the accident. However, his evidence was that as he arrived at the scene he saw two motorcycles lying on the road. He did not witness if both the motorcycles had collided into one another. He denied being involved in the said accident and also denied receiving any notice to attend at the police station. He confirmed that the colour of the motortaxi at the material time was blue. He uses that road daily and he knows that one cannot speed in that area as a new bridge was being constructed and there was a road deviation and the previous road had been closed to traffic for about two to three days earlier. Subsequently, he changed his testimony during cross-examination and said that he saw the collision between the two motorcycles whilst they were proceeding from the opposite direction to one another. Even though he had seen the accident and saw the parties injured, he did not stop to render assistance because his passenger wanted to go to work. He denied the plaintiff's solicitor's suggestion that he had first collided into motorcycle PEH 9047 and then had collided into the plaintiff's motorcycle. He denied a suggestion that the road was closed that morning and, that realizing that the road was closed, he suddenly swung into the road deviation thus colliding into motorcycle PEH 9047 and then colliding into the plaintiff's motorcycle. He also denied that he was speeding. The defence then called the passenger who was travelling in the motortaxi at the material

time and who was seated in the front passenger seat. She said she saw the collision ahead of her between the two motorcycles and when pressed for details of the accident she said she was unclear. She want even sure of the direction of the motorcycles.

*Findings of the court*

In his defence, the defendant did not plead that there was a collision between both the motorcycles. The learned sessions judge found that the defendant's motortaxi was not involved in the accident. The lower court found that there were inconsistencies between the evidence of SP1 and SP4 and therefore held that on a balance of probabilities the motortaxi did not collide into both the motorcycles.

In dealing with the facts of the case, I held that the pleadings of the defendant indicated that there was no collision between the defendant's motortaxi and the plaintiff's motorcycle on the defendant's correct side of the road. In other words, in his pleadings, the defendant admits the collision occurred on his wrong side of the road. The pleadings of the defendant leaves much to be desired. It is too imprecise and lacks details. If the defendant had said 'yang dipandu oleh defendan sewaktu defendan memasuki jalan sah plaintiff ...' at least it could make sense in that the defendant denies that the collision had occurred in the lawful path of the plaintiff as pleaded by the plaintiff. But in this case, by omitting the word 'plaintiff' after the words 'jalan sah' the inference to be drawn, is that he denies that the collision occurred on his (the defendant's) lawful path. With such an admission, the denial of the defendant of any involvement in the collision with the two motorcycles cannot be upheld.

The eye-witness SP1 had said he saw the accident. Even if the learned sessions judge did not give much credence to the testimony of SP4 (the Indian motorcyclist), surely there was no reason for him to reject the evidence of SP1. On the other hand, the defendant was not telling the truth. In examination-in-chief, he said he did not see the collision between the two motorcycles. However, in cross-examination he said he was about 46ft away and saw the accident between the two motorcycles. However, he never said how the accident occurred. In any case, as a motortaxi driver and having only one passenger with him, he did not even stop to render assistance to the two motorcyclists who were injured. As for his passenger, her evidence was so cloudy that nothing material in support of the defendant could be elicited. She admitted there was a collision ahead of her between the two motorcycles but she could not see clearly. She could not even tell the direction of the motorcycles.

I am indeed surprised that the defendant/respondent is appealing against my decision because counsel for the defendant/respondent did not have anything to submit before me and merely said 'I leave it at that'. Having failed to argue his case at this appeal by putting forward rebuttal submission, and by leaving the matter to be decided by the court, I took the view that counsel for the respondent had indeed conceded to the appeal.

Be that as it may, on the evidence, I found that the defendant's motortaxi was in all probabilities involved in the accident. Although an appellate court ought to be reluctant to disturb the findings of a trial court which had seen and heard the testimony of the witnesses, but where the judgment of the lower court is arrived at based on wrong inferences or conclusions drawn from accepted facts, an appellate court is entitled to interfere with such conclusions. SP1, the eye-witness, even wrote the number of the motortaxi on a piece of plaster which was tendered in court. SP1 testified as to the manner in which the accident occurred. This, coupled with the denial of the defendant of his involvement in the two collisions and taken together with his unimpressive and imprecise pleadings which conceded that the collision occurred on his wrong side of the road, I found that the appellant had indeed proven his case against the defendant. Since the appeal was only against the issue of liability, I allowed the appeal and set aside the judgment of the lower court dated 21 April 2002 only on liability. I found the defendant 100% liable for the accident and awarded costs here and below.

Reported by Lim Lee Na